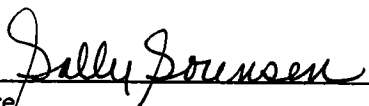
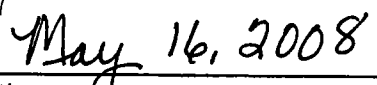


Appl. No. : 10/764,978  
Confirmation No. : 9303  
Applicant : Plamen Denchev  
  
Filed : January 23, 2004  
Title : METHODS FOR REPRODUCING  
CONIFERS BY SOMATIC  
EMBRYOGENESIS  
  
TC/A.U. : 1661  
Examiner : Hwu, June  
  
Docket No. : 205502-9037-US00

I, Sally Sorensen, hereby certify that this correspondence is being electronically filed with the United States Patent and Trademark Office on the date of my signature.

  
Signature  
  
Date of Signature

**DECLARATION OF LARRY FOWKE  
UNDER 37 C.F.R. § 1.132**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

I, Larry Fowke, do hereby declare and state the following:

1. I am currently an Emeritus Professor in the Department of Biology at the University of Saskatchewan.
2. I received a Bachelors of Arts Degree in Biology from the University of Saskatchewan in 1963. I received a Ph.D. in Plant Cell Biology from the Carleton University in 1968.
3. Attached hereto as Exhibit A is a copy of my Curriculum Vitae.
4. I have read and understand the invention as disclosed in the above-identified patent application, including the invention described by the presently pending claims.
5. I have reviewed the Office Action of January 16, 2008. I understand that claims 1, 5-9, 12-13, 16-23, 27, 28, 33-34, and 36-43 are rejected under 35 U.S.C. § 103(a) as unpatentable over Attree (U.S. Patent No. 6,627,441) in view of Handley (U.S. Patent No. 5,491,090). I also understand that claims 50-54 are rejected under 35 U.S.C. § 103(a) as unpatentable over Fan (U.S. Patent No. 6,689,609) in view of Handley. I also

understand that claims 55-60 are rejected under 35 U.S.C. § 103(a) as unpatentable over Coke (U.S. Patent No. 5,534,433) in view of Pullman (U.S. Patent No. 6,492,174). I believe that the evidence presented herein demonstrates that the pending claims are not obvious in light of the cited references.

6. Embryogenesis *in vitro* is a multi-step process. First, the embryonic cultures must be induced from starting explants in an induction medium in which somatic tissue from the plant must de-differentiate and begin proliferating. The resultant cultures can be maintained, and in somatic embryogenesis reproduced, in a maintenance or proliferation medium. During this step the main goal is for the cells to proliferate as fast as possible, without developing, while maintaining the ability to mature, germinate and produce seedlings. The media used during induction and maintenance contain a relatively high level of hormones, such as auxin and cytokinin, which allow the cells to proliferate, but not differentiate. The next step, prematuration, is optional and is meant to provide a gentle transition from maintenance, where the cells proliferate, but do not differentiate, to maturation, where proliferation slows and differentiation of the cells is encouraged. The prematuration medium contains less auxin and cytokinin than the maintenance medium. The prematuration medium may also contain ABA and may have increased water stress as compared to the maintenance medium. The embryonic cultures must then be stimulated to undergo maturation by incubation in a maturation or development medium. The maturation medium does not contain any auxin or cytokinin. During maturation, the cells stop proliferating, and begin differentiating into embryos. The mature embryos can then be germinated to produce somatic seedlings. Each step in the process is defined by the media used and the effects of the media on the cells.
7. The media and culture conditions used in each of the above described steps are distinct. In particular, maturation media do not contain any auxin or cytokinin to stimulate cell growth. The induction and maintenance media contain auxin or cytokinin to stimulate cellular proliferation. The prematuration media have less auxin and cytokinin than the induction or maintenance media. In addition, maturation media have a high osmoticum and ABA added to stimulate differentiation of the cells, while induction and maintenance media have low osmoticum and no ABA, both of which are important to stimulate

cellular differentiation. Prematuration media provide a gentle transition to maturation media. Prematuration media contain some ABA and have a higher osmoticum than the induction and maintenance media.

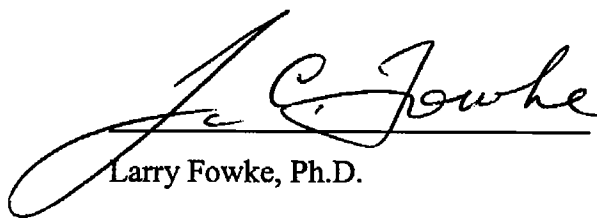
8. The pending claims are drawn to methods for reproducing coniferous somatic embryos by somatic embryogenesis comprising growing an embryogenic culture derived from an explant on a nutrient medium comprising lactose, lactose and an additional sugar or a galactose-containing sugar and an additional sugar in steps prior to the maturation step.
9. As stated above, induction, maintenance and prematuration are steps prior to maturation and the media used during these steps help the conifer cells to remain undifferentiated and to proliferate. Maturation requires the cells to slow or stop proliferating and differentiate. Germination requires further differentiation to produce seedlings. Because the goals at the different steps of the process are exactly opposite, the media used at different stages of the method are, and would be expected to be, distinct.
10. Prior to the present application, lactose was not believed to be metabolized by conifer cells and non-metabolizable sugars would not normally be added to the induction, maintenance or prematuration media. The results presented in Example 5 of the pending application demonstrate that lactose and galactose are utilized by conifer cells. It is unexpected that lactose and galactose, sugars not generally available to plants, are metabolized by conifer cells.
11. In addition, the results presented in the Examples of the present application demonstrate that addition of galactose-containing sugars, and lactose in particular, to the induction, maintenance and/or prematuration media increased the number of somatic embryos produced per gram of tissue as compared to cells grown in the presence of other more commonly used sugars such as sucrose or maltose. It was surprising that a galactose-containing sugar could be used at all during induction, maintenance and prematuration, and even more unexpected that use of a galactose-containing sugar would produce superior results as compared to sucrose and maltose.

12. For the reasons set forth above in paragraphs 6-11, the results demonstrated in the Examples section of the present application are surprising and would not be expected based on the cited references.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date:

May 15, 2008

  
Larry Fowke, Ph.D.

Docket No.: 205502-9037-US00  
Michael Best & Friedrich LLP  
Two Prudential Plaza  
180 North Stetson Avenue, Suite 2000  
Chicago, IL 60601  
(312) 222-0800

## **CURRICULUM VITAE FOR LARRY FOWKE**

- July 2003-

### **1. PERSONAL**

Born June 6, 1941  
Married - 3 children

### **2. ACADEMIC CREDENTIALS**

Earned D.Sc., University of Saskatchewan, 2006  
Ph.D. Carleton University, 1968, Biology Department, Plant Cell Biology  
B.A. Honours, University of Saskatchewan, 1963, Biology Department

### **3. APPOINTMENTS AND PROMOTIONS - BIOLOGY, UNIVERSITY OF SASKATCHEWAN**

Emeritus Professor, 2006-present  
Professor, 1979- 2006  
Head of Department, 1994-2000  
Assistant Head of Department, 1992-1994  
Associate Professor, 1974-1979  
Assistant Professor, 1970-1974

### **4. SPECIAL AWARDS**

ISI HighlyCited Researcher for period 1981 - 1999 (Plant and Animal Category)  
Jarislowsky Chair in Biotechnology, 2002-2003.  
Rawson Professor of Biology, 3 year appointment from July 2002.  
Finalist (twice) for Annual Innovation Place/UST Award of Innovation, (2002 - 2005).  
Distinguished Researcher Award, University of Saskatchewan, Spring 1998.  
NSERC PDF, 1968-1970.

### **5. TEACHING**

Nominated three times for University of Saskatchewan Students Union Teaching Excellence Award.

Regular teaching duties: participated in courses in general biology, cell biology, plant anatomy, plant development, electron microscope techniques.

### **6. INVITED SYMPOSIUM TALKS AND PLENARY LECTURES**

Symposium talk, NATO Advanced Research Workshop, Kiev, Ukraine, 2002.  
Symposium talk, International Association of Plant Tissue Culture & Biotechnology, Florida, USA, 2002  
Symposium talk, International Union of Forest Research Organizations, Quebec, Canada, 1997.  
Symposium talk, Can. Soc. Plant Physiol./Can. Bot. Assoc., Guelph, Canada, 1995.  
Symposium talk, Congress on Cell and Tissue Culture, Raleigh, U.S.A., 1994.  
Symposium talk, XV International Botanical Congress, Yokohama, Japan, 1993.  
Symposium talk, 1<sup>st</sup> Asia-Pacific Conference on Plant Cell and Tissue Culture, Taejon, Korea, 1993.  
Symposium talk, Plant Cell Biotechnologies Conference, Sofia, Bulgaria, 1993.  
Symposium talk, Vesicle Traffic in Plants Conference, Gottingen, Germany, 1992.  
Plenary Lecture, 8<sup>th</sup> International Protoplast Symposium, Uppsala, Sweden, 1991.

- Symposium talk, Society for Experimental Botany, Warwick, England, 1990.  
 Symposium talk, Gordon Research Conference on Plant Cell and Tissue Culture, Plymouth, U.S.A., 1989.  
 Keynote talk, 4<sup>th</sup> International Conifer Tissue Culture Work Group, Saskatoon, Canada, 1988.  
 Symposium talk, Interkingdom Workshop on Membrane Traffic and Recycling in Eukaryotes, Wesley Chapel, Florida, 1988.  
 Symposium talk, XIV International Botanical Congress, Berlin, Germany, 1987.  
 Symposium talk, 7<sup>th</sup> International Protoplast Symposium, Wageningen, The Netherlands, 1987.  
 Symposium talk, NATO Advanced Study Institute, Albufeira, Portugal, 1987.  
 Plenary Lecture, VI International Congress of Plant Tissue and Cell Culture, Minneapolis, USA, 1986.  
 Symposium talk, British Society for Cell Biology, Norwich, England, 1986.  
 Symposium talk, Scandinavian Electron Microscope Society, Copenhagen, Denmark, 1984.  
 Symposium talk, 6<sup>th</sup> International Protoplast Symposium, Basel, Switzerland, 1983.  
 Symposium talk, V International Congress of Plant Tissue and Cell Culture, Tokyo, Japan, 1982.  
 Symposium talk, International Symposium for Plant Cell Culture in Plant Improvement, Calcutta, India, 1981.  
 Session organizer and symposium talk at XIII International Botanical Congress, Sydney, Australia, 1981.  
 Symposium talk, American Tissue Culture Association, Seattle, USA, 1979.  
 Symposium talk, International Congress for Plant Cell and Tissue Culture, Calgary, Canada, 1978.  
 Symposium talk, 13<sup>th</sup> Annual Electron Microscope Colloquium, Ames, USA, 1976

## 7. TRAINING

7 Ph.D. students, 21 postdoctoral fellows and research associates, 10 international visitors and numerous research technicians.

## 8. PROFESSIONAL PRACTICE

Advisory Board, Protoplasma, 1984-present  
 Numerous photographs published in books and review articles  
 NSERC grants selection committee, Cell Biology, 2003-04  
 Editor, Plant Cell Reports, 1997-2006  
 Advisory Board, Cell Biology International, 1987- 2004  
 Advisory Board, Plant Cell Reports, 1981-1984  
 Co-editor, Pro-Tem, Canadian Journal of Botany, 6 months, 1983  
 Associate Editor, Canadian Journal of Botany, 1979-1982  
 Congress Secretary, International Association of Plant Tissue Culture Congress, Calgary, 1978  
 Canadian Correspondent, International Association of Plant Tissue Culture, 1978-1982  
 Western Canadian Director, Canadian Society for Cell Biology, 1972-19, 1978-1980  
 NSERC grants selection committee, Cell Biology and Genetics, 1985-88, Chairman 1987-88

## 9. PUBLICATIONS

### PAPERS IN REFEREED JOURNALS

124. J. Kang, Y. Mizukami, H. Wang, L. Fowke and N.G. Dengler. 2007 Modification of cell proliferation patterns alter leaf vein architecture in *Arabidopsis thaliana*. **Planta** 226: 1207-1218.
123. D. Bird, M. Buruiana, Y. Zhou, L. Fowke and Hong Wang. 2007. *Arabidopsis* cyclin-dependent kinase inhibitors are nuclear-localized and show different localization patterns within the nucleoplasm. **Plant Cell Reports** 26: 861-872.
122. Y. Zhou, H. Niu, F. Brandizzi, L.C. Fowke and H. Wang. 2006. Molecular control of nuclear and

- subnuclear targeting of the plant CDK inhibitor ICK1 and ICK1-mediated nuclear transport of CDKA. **Plant Molecular Biology** 62: 261-278.
121. G. Pan, Y. Zhou, S. Gilmer and L.C. Fowke. 2004. An efficient method for flow cytometric analysis of pollen and detection of 2n nuclei in *Brassica napus* pollen. **Plant Cell Reports** 23: 196-202.
  120. Y. Zhou, G. Li, F. Brandizzi, L. Fowke and H. Wang. 2003. The plant cyclin-dependent kinase inhibitor ICK1 has distinct functional domains for in vivo kinase inhibition, protein stability and nuclear localization. **The Plant Journal** 35: 476-489.
  119. Y. Zhou, H. Wang, S. Gilmer, S. Whitwill and L.C. Fowke. 2003. Effects of co-expressing plant CDK inhibitor ICK1 and D-type cyclin genes on plant growth, cell size and ploidy in *Arabidopsis thaliana*. **Planta** 216: 604-613..
  118. Y. Zhou, H. Wang and L.C. Fowke. 2002. Control of petal and pollen development by the plant cyclin-dependent kinase inhibitor ICK1 in transgenic Brassica plants. **Planta** 215: 248-257.
  117. Y. Zhou, L.C. Fowke and H. Wang. 2002. Plant CDK inhibitors: studies of interactions with cell cycle regulators in the yeast two-hybrid system and functional comparisons in transgenic *Arabidopsis* plants. **Plant Cell Reports** 20: 967-975.
  116. A.L. Cleary, L.C. Fowke, H. Wang and P.C.L. John. 2002. The effect of ICK1, a plant cyclin-dependent kinase inhibitor, on mitosis in living plant cells. **Plant Cell Reports** 20: 814-820.
  115. H. Wang, Y. Zhou, S. Gilmer, S. Whitwell and L.C. Fowke. 2000. Expression of the plant cyclin-dependent kinase inhibitor ICK1 affects cell division, plant growth and morphology. **The Plant Journal** 24: 613-623.
  114. J.D.I. Harper, L.C. Fowke, S. Gilmer, R.L. Overall and J. Marc. 2000. A centrin homologue is localized across the developing cell plate in gymnosperms and angiosperms. **Protoplasma** 211:207-216.
  113. H. Lui, H. Wang, C. DeLong, L.C. Fowke, W.L. Crosby and P.R. Fobert. 2000. The *Arabidopsis* Cdc-2a-interacting protein ICK2 is structurally related to ICK1 and is a potent inhibitor of cyclin-dependent kinase activity in vitro. **The Plant Journal** 21: 379-385.
  112. L.C. Fowke, T. Dibbayawan, O. Schwartz, J. Harper and R. Overall. 1999. Combined immunofluorescence and field emission scanning electron microscope study of plasma membrane-associated organelles in highly vacuolated suspensor cells of white spruce somatic embryos. **Cell Biol. Internat.** 23: 389-397.
  111. S. Gilmer, P. Clay, T.H. MacRae and L.C. Fowke. 1999. Tyrosinated, but not detyrosinated,  $\alpha$ -tubulin is present in root tip cells. **Protoplasma** 210: 92-98.
  110. D.A. Reid, J.N.A. Lott, S.M. Attree and L.C. Fowke. 1999. Imbibition of white spruce seeds and somatic embryos: a study of morphological changes in an environmental scanning electron microscope and potassium leakage. **In Vitro Cell. Dev. Biol. - Plant.** 35: 303-308.
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  108. D.A. Reid, J.N.A. Lott, S.M. Attree and L.C. Fowke. 1999. Mineral nutrition in white spruce (*Picea glauca*

- [Moench] Voss) seeds and somatic embryos. I. Phosphorus, phytic acid, potassium, magnesium, calcium, iron and zinc. **Plant Science** 141: 11-18.
107. S. Gilmer, P. Clay, T.H. MacRae and L.C. Fowke. 1999. Acetylated tubulin is found in all microtubule arrays of two species of pine. **Protoplasma**. 207: 174-185.
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  103. K. Ilic-Grubor, S.M. Attree and L.C. Fowke. 1998. Induction of microspore-derived embryos of *Brassica napus* L. with polyethylene glycol (PEG) as osmoticum in a low sucrose medium. **Plant Cell Reports** 17: 329-333.
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  101. H. Wang, L.C. Fowke and W.L. Crosby. 1997. A cyclin-dependent kinase inhibitor gene from *Arabidopsis thaliana*. **Nature** 386: 451-452.
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  99. P. Binarova, C. Cihalikova, J. Dolezel, S. Gilmer and L.C. Fowke. 1996. Actin distribution in somatic embryos and embryogenic protoplasts of white spruce (*Picea glauca*). **In Vitro Cell. Dev. Biol - Plant** 32: 59-65.
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and *B. napus* (Brassicaceae). I. Nectary size and  
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microtubule organizing centres with MPM-2 in dividing  
cells of higher plants using immunofluorescence and  
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93. L.C. Fowke, S.M. Attree and P.J. Rennie. 1994. Scanning  
electron microscopy of hydrated and desiccated mature  
somatic embryos and zygotic embryos of white spruce  
(*Picea glauca* [Moench] Voss). **Plant Cell Reports** 13:  
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83. S.M. Attree, D. Moore, V.K. Sawhney, L.C. Fowke, 1991. Enhanced maturation and desiccation tolerance of white spruce (*Picea glauca* [Moench]) somatic embryos. Effects of a non-plasmolysing water stress and abscisic acid. **Ann. Bot.** 68: 519-525.
82. H. Wang, A.J. Cutler, L.C. Fowke, 1991. DNA replication and the development of preprophase bands in soybean protoplast cultures. **Physiol. Plant.** 82: 150-156.
81. H. Wang, A.J. Cutler, L.C. Fowke, 1991. Microtubule organization in cultured soybean and black spruce cells. Interphase-mitosis transition and spindle morphology. **Protoplasma** 162: 46-54.
80. H. Wang, G.P. Slater, L.C. Fowke, M. Saleem, A.J. Cutler, 1991. Comparison of cell wall regeneration on maize protoplasts isolated from leaf tissue and suspension cultured cells. **In Vitro Cell. Dev. Biol.** 27P: 70-76.
79. H. Wang, M. Saleem, L.C. Fowke, A.J. Cutler, 1991. DNA synthesis in maize mesophyll protoplasts in relation to source tissue differentiation. **J. Plant Physiol.** 138: 200-203.
78. S.M. Attree, T.E. Tautorus, D.I. Dunstan, L.C. Fowke, 1990. Somatic embryo maturation, germination, and soil establishment of plants of black and white spruce (*Picea mariana* and *Picea glauca*). **Can. J. Bot.** 68:

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77. L.C. Fowke, S.M. Attree, H. Wang, D. Dunstan 1990. Microtubule organization and cell division in embryogenic protoplast cultures of white spruce (*Picea glauca*). **Protoplasma** 158: 86-94.
76. T.E. Tautorus, L.C. Fowke, D.I. Dunstan. 1990. Comparative studies of protoplast development in jack pine (*Pinus banksiana* Lamb.). **Can. J. Bot.** 68: 1774-1779.
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72. T.E. Tautorus, F. Bekkaoui, M. Pilon, R.S.S. Datla, W.L. Crosby, L.C. Fowke, D.I. Dunstan. 1989. Factors affecting transient gene expression in electroporated black spruce (*Picea mariana*) and jack pine (*Pinus banksiana*) protoplasts. **Theor. Appl. Genet.** 78: 531-536.
71. S.M. Attree, S. Budimir, L.C. Fowke. 1989. Somatic embryogenesis and plantlet regeneration from cultured shoots and cotyledons from stored seed of black and white spruce (*Picea mariana* and *Picea glauca*). **Can. J. Bot.** 68: 30-34.
70. H. Wang, A.J. Cutler and L.C. Fowke. 1989. Preprophase bands in cultured multinucleate soybean protoplasts. **Protoplasma** 150: 110-116.
69. S.M. Attree, D.I. Dunstan and L.C. Fowke. 1989. Initiation of embryogenic callus and suspension cultures, and improved embryo regeneration from protoplasts of white spruce (*Picea glauca*). **Can. J. Bot.** 67: 1790-1795.
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- section analysis of coated pits and coated vesicles in soybean protoplasts. **Cell Biol. Internat. Rep.** 13: 419-425.
65. H. Wang, A.J. Cutler and L.C. Fowke. 1989. High frequencies of preprophase bands in soybean protoplast cultures. **J. Cell Sci.** 92: 575-580.
  64. H. Wang, A.J. Cutler, M. Saleem and L.C. Fowke. 1989. Microtubules in maize leaf protoplasts in relation to donor tissue and in vitro culture. **Protoplasma** 150: 48-53.
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  60. M.A. Tanchak, P.J. Rennie and L.C. Fowke. 1988. Ultrastructure of the partially coated reticulum and dictyosomes during endocytosis by soybean protoplasts. **Planta** 175: 433-441.
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